

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 924, CUTTACK, SATURDAY, MAY 26, 2007/ JAISTHA 5, 1929

LABOUR & EMPLOYMENT DEPARTMENT
NOTIFICATION

The 15th May 2007

No.4781/1i/1(B)-90/97/L.E. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 30th March, 2007 in I.D. Case No. 76/98 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Dharitri, Industrial Estate, Bhubaneswar and its workman Shri Ajit Kumar Mohanty was referred for adjudication is hereby published as in the schedule below:

SCHEDULE
IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 76 OF 1998
Dated The 30th March 2007

Present:

Shri S.K. Mohapatra, O.S.J.S.(Jr.Branch),
Presideing Officer,
Labour Court,
Bhubaneswar.

Between:

The Management of . . First Party— Management
M/s. Dharitri,
Industrial Estate,
Bhubaneswar.

And

Their Workman . . Second Party —Workman
Shri Ajit Kumar Mohanty

Appearance:

Shri Himanshu Hota . . For First Party— Management

Shri S. Mohapatra . . For Second Party—Workman

A W A R D

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of M/s. Dharitri, Industrial Estate, Bhubaneswar and their workman Shri Ajit Kumar Mohanty under Notification No. 5323/LE., dated the 18th May 1998 vide Memo No. 8314(5)/LE., dated the 6th August 1998 for adjudication.

2. The terms of reference by the State Government is as follows : —

"Whether the action of the employer of news paper establishment "Dharitri" Bhubaneswar in refusing employment of Special Correspondent, Bhubaneswar to Shri Ajit Kumar Mohanty with effect from 1st April 1996 is legal and/or justified ? If not to what relief Shri Mohanty is entitled to ?"

3. Shorn of all unnecessary details, the case of the workman is as follows :—

The workman joined in the new paper establishment of the Management namely 'The Dharitri' (hereinafter referred to as the Management) at Bhubaneswar on 1st November 1974. The workman in due course became an Accredited Journalist posted at State Headquarter in January, 1980. Being Principal Correspondent-*cum*-Chief of News Bureau, the workman had been given Qr. No. VA-5/3 in Unit-II, Bhubaneswar as his residential office and by mutual agreement the Management was to bear the rental, electric and telephone charges for the said quarter regularly. The Management in order to harass and victimise the workman, rejected his leave application which was on medical ground. On 3rd April 1996 the Management brought out a public news in its news paper "The Dharitri" to give an impression upon the public that the workman was no more in their employment. Such public notice was issued for 10 days consecutively in the said news paper. The accreditation card of the workman was cancelled and the office telephone to the residence of the workman disconnected. When the workman gave out his reaction in the matter in writing to the Management, the Management did not reply. The Management withheld the wages of the workman in the month of March, 1996 and also refused employment to him. On these averments the workman has sought for his reinstatement in service alongwith full back wages.

4. The Management in its written statement while admitting that the workman was working as a Senior Correspondent for its news paper. The Dharitri has contended that the workman remained absent from his duty with effect from 11th March 1996 with an ulterior motive to join another organisation without giving any prior intimation to the Management. The other averments of the workman have been denied by the Management. On all these averments, the Management has sought for rejection of the claim of the workman.

5. On the aforesaid pleadings of the parties, the following issues have been framed for determination.

I S S U E S

(i) Whether the action of the employer of news paper establishment "Dharitri" Bhubaneswar is refusing employment of special correspondent, Bhubaneswar to Shri Ajit KUMar Mohanty with effect from 1st April 1996 is legal and/or justified ?

(ii) If not to what relief Shri Mohanty is entitled to ?

6. Now that it is an admitted fact that the workman was working as a Special Correspondent for the news paper "The Dharitri" belonging to the Management, the only thing remains to be seen as to whether the Management terminated the services of the workman by way of refusal of employment or as to whether the workman on his own abandoned his service to join another organisation as alleged.

In this context the relevant evidence as can be gathered from the deposition of the workman who examined himself as W.W.1 is that on 1st April 1996, the Management published a news item in the Dharitri regarding closure of its City Office. According to the workman, the Management was using the residential quarter of the workman as its City Office. Ext.2/a has been proved as the said news item regarding shifting of the City Office. According to W.W.1 he raised protest to the Management in writing vide his letter dated 2nd April 1996. Ext. 2/a relates to closure of the City Office with effect from 1st April 1996 asking general public to make all correspondence to its head office. In Ext.3 the workman has made protest to the Management by stating that only his residential quarter was being used as City Office and demanded to know from the Management whether the publication of the notice under Ext.2/a should be construed as termination of his service. On the score the explanation of the Management as it emanates from the evidence of the Editor of The Dharitri who examined himself as M.W.1 is that they shifted one Mail Box kept in the quarter allotted to the workman only because many persons of the public distrubed the workman himself without using the Mail Box and therefore the workman had verbally requested the Management to shift the Mail Box to the head office. It is not the case of either the workman or the Managment that on the very day the news item under Ext. 2/a appeared, the Management forced out the workman from the said quarter. In any event there is no material on record to show that the quarter had been allotted the workman in his personal capacity by the Government but it rather appears that it was allotted to the Management's news paper The Dharitri and therefore much meaning can not be had from the notice Ext. 2/a to conclusively hold that it was a notice of termination of service of the workman.

7. Another thing which emanates from the evidence of the workman is that his services were terminated by the Management with effect from 1st April 1996 and that he received a correspondence from the Management on 15th April 1996 vide Ext. 4 that his leave application dated the 2nd April 1996 had been disallowed. Now that there is documentary evidence Ext.A to show that the workman himself had applied for leave on 2nd April 1996, it can never be stated that the service of the workman had been terminated by the Management with effect from 1st April 1996. However, it is clear that the workman vide Ext.A had applied for leave for one month i.e. from 2nd April 1996 to 2nd May 1996. Ext.A indicates that one xerox copy of the medical certificate had been attached with the leave application. It appears from Ext.4 that the Management by its letter dated the 2nd April 1996 refused leave to the workman as it was an election period and absence of the workman would hampered the important works of the Management. There is no material on record to show that the Management thereafter took any other steps. It is also clear that after 2nd April 1996 the workman did not work for the news paper of the Management. It is not disputed that the workman was a Correspondent of the Management's news paper since the year 1974 and thereby he had put on long years of service under the Management. In such a situation the Management can not simply escape its responsibility by stating that the workman abandoned its news paper. The Management was duty bound to issue notice to the workman to rejoin its organisation and he should have been given due opportunity of explaining himself. If at all the workman remained on unauthorised leave, necessary charge should have been framed against the workman and the Management could have put him under suspension and thereafter could have held a departmental proceeding against the workman. No such thing have ever done in terms of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act). Even if it is accepted that the workman remained absent from his work even after refusal of his leave, it was not opened to the Management to remain silent in the matter and to come out with an explanation about the abandonment of service by the workman only when an Industrial Dispute arose. It was well within the power of the Management to issue proper notice to the workman to rejoin his duty and on the violation of the workman to do so, to start a disciplinary action against him. Therefore in the facts and circumstances of the present case it neither appeals to common sense nor does it emanates from the evidence on record that the workman had abandoned his work. Since the Management has failed in its basic duties to issue proper notice to the workman to rejoin his work, it can rather be construed that the Management terminated the services of the workman with effect from 2nd April 1996 by way of refusal of employment as can be gathered from the attending circumstances. In any event the Management was legally bound to issue a show cause notice to the workman

to afford a reasonable opportunity to him before terminating his service. In this context the decisions of the Hon'ble Apex Court in the cases of M/s. Lakshmi Precision Screws Ltd.-V-Ram Bahagat reported in AIR 2002 S.C. 2914, Uptron India Ltd.-V-Shammi Bhan and another reported in 1998 LAB. I.C. 1545 and M/s. Scooters India Ltd.-V-Mohammed Yaqub and another reported in AIR 2001 S.C. 227 can be relied on. In the case of M/s. Lakshmi Precision Screws Ltd.-V-Ram Bahagat reported in AIR 2002 S.C. 2914, the Hon'ble Apex Court have held as follows: —

“It is thus in this context one ought to read the doctrine of natural justice being an inbuilt requirement on the Standing Orders. Significantly, the facts depict that the respondent-workman remained absent from duty from 13th October, 1990 and it is within a period of four days that a letter was sent to the workman informing him that since he was absenting himself from duty without authorised leave he was advised to report back within 48 hours and also to tender his explanation for his absence, otherwise his disintorestedness would thus he presumed. Is this in strict compliance with the Certified Standing Order-the answer possibly cannot be in the affirmative. Though how ever, if the letter dated 25th October, 1990 as noticed above is to be taken note of, then and in that event the same thus come within the ambit of the Certified Standing Order of 10 days' continued absence-the situation however, is slightly different in the present context since the letter of 25th October is an intimation of his name being struck off the rolls of the company. It is an act, subsequent to the order of termination and if the letter of 17th October is an imdication for such an order of termination the same does not come within the ambit of the Certified Standing Order. The High Court on this score stated as follows: —

‘Even if it presumed that the petitioner-Management may have afforded an opportunity to the respondent-workman to tender his explanation and as such complied with the principles of natural justice in terms of the decision rendered by the Apex Court in Hindustan Paper Corporation's case (supra), yet the question remains, whether the determination of the petitioner Management was arbitrary and without application of mind ?’

In our considered view, the rejection of the claim of the respondent-workman is absolutely arbitrary and without consideration of the material placed on record by the respondent-workman (as discussed in the foregoing paragraph). The Labour Court examined in detail the factual position and returned a finding that the respondent-workman

had not absented himself from service deliberately or intentionally and also that he had not abandoned his service. It was further concluded that his absence was based on account of his illness which could be affirmed from the medical certificates produced by him. In the aforesaid view of the matter, in our considered view, the action the petitioner-Management in rejecting the representation of the respondent-workman dated the 30th January 1991 was clearly arbitrary and as such it is not sustainable in law."

"Having regard to the well settled principle of law as in *Yadav (supra)*, the decision to terminate by reason of a presumption as noticed above, we cannot but lend concurrence to the conclusion of the High Court that the action is purely and surely arbitrary in nature. Arbitrariness in an anti-thesis to rule of law, equity, fair pay and justice contract of employment there may be but it cannot be devoid of the basic principles of the concept of justice. Justice oriented approach as is the present trend in India Jurisprudence shall have to read as an inbuilt requirement of the basic of concept of justice, to wit, the doctrine of natural justice, fairness, equality and rule of law; the letter dated the 17th October cannot by any stretch be treated to be an opportunity since it is only on the fourth day that such a letter was sent-the action of the appellant herein stands out to be devoid of any justification, neither it depicts acceptability of the doctrine of natural justice or the concept of fairness-arbitrariness is written large and we confirm the finding of the High Court as also that of the learned Trial Judge and the Tribunal as regards issue as noticed above."

Since no opportunity had been given to the workman by the Management by issuing show cause notice to him, the termination of the services of the workman with effect from 2nd April 1996 by the Management is illegal and can not be justified. The workman is entitled to the relief of reinstatement in his service by the Management.

8. On the question of back wages, it is seen that the workman himself has admitted that he joined the news paper 'The Samaya' on 24th November 1996 as its Special Correspondent. Thus having regard to the facts and circumstances of this case, in the instant case there is no order as to any back wages as because gainful employment of the workman from the year 1996 itself is an admitted fact.

The reference is answered accordingly.

Dictated and corrected by me.

S.K. Mohapatra,
Dt. 30-03-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K. Mohapatra,
Dt. 30-03-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N.C. ROY

Under- Secretary to Government